

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 7 CASE**

Bryon James Chisholm  
SSN XXX-XX-4850  
Lisa Marie Chisholm  
SSN XXX-XX-5605

**CASE NO. 04-60887 DDO**

Debtor.

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**NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY**

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. Select Portfolio Servicing, Inc. f/k/a Fairbanks Capital Corporation (hereinafter "Secured Creditor"), by its undersigned attorney moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on September 28, 2004, at 1:00 p.m., or as soon thereafter as counsel can be heard, before the Honorable Dennis D. O'Brien in Courtroom 2, Second Floor of the above entitled Court located at U.S. Courthouse, 118 South Mill Street, Fergus Falls, Minnesota.

3. Any response to this motion must be filed and delivered not later than September 23, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than September 17, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on July 26, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001. This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1. Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$70,000.00, as evidenced by that certain mortgage deed dated November 26, 2001, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated November 26, 2001, executed by Bryon Chisholm and Lisa Chisholm, husband and wife, as joint tenants, recorded December 7, 2001, as Document No. 204293, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A". The property is located in Norman County, Minnesota and is legally described as follows to-wit:

North ½ of Lot 6 and all of Lots 7 and 8, Block 41, First Addition, City of Ada.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This Secured Creditor's interest in the property is not adequately protected where, as of September 7, 2004, Debtor is delinquent in the making of monthly payments as required for the months of December, 2002 through September, 2004, inclusive, in the amount of \$640.32 each; accruing late charges of \$160.10 and attorneys fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.

10. Debtor has no equity in the property and the property is not necessary to an effective

organization. The value of the property as scheduled by Debtor is \$100,000.00 subject to Secured Creditor's mortgage in excess of \$95,767.62.

Considering selling costs of 10%, Debtor has no real equity in the property. Since this is a liquidation case, no reorganization is being attempted.

11. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

12. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

**WHEREFORE**, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be modified so to permit the movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 7th day of September, 2004.

**WILFORD & GESKE**

By /e/ James A. Geske  
James A. Geske  
Attorneys for Secured Creditor  
7650 Currell Blvd., Ste 300  
Woodbury, MN 55125  
651-209-3300  
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

\* not a complete copy

204293

No. 3744 Date 12/7/01

Mortgage Registry Tax of

e 1161.00 paidRichard A. Minter  
County Auditor/Treasurer

Tammy Koppel Deputy

REC# 71117

\$27.00 pd

OFFICE OF COUNTY RECORDER  
NORMAN COUNTY, MINNESOTA

I HEREBY CERTIFY THAT THIS

INSTRUMENT # 204293

WAS FILED IN THIS OFFICE FOR RECORD

ON THE 7th DAY OF December  
2001 AT 10:30 A. M.Kari Anderson  
COUNTY RECORDERNumbered ☒ DEPUTY  
Indexed ☒ Traced ☒ Reviewed ☒

(Space Above This Line For Recording Data)

## MORTGAGE

Return To:

NEW CENTURY MORTGAGE CORPORATION

18400 VON KARMAN, SUITE 1000  
IRVINE, CA 92612

RETURN TO:

GENERAL AMERICAN CORP

5401 Gamble Dr., Suite 300  
St. Louis Park, MN 55418

1146552

## DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated November 26, 2001 together with all Riders to this document.

0000534418

MINNESOTA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3024 1/01

VMP-6(MN) (0005)

Page 1 of 15

Initials: CC

VMP MORTGAGE FORMS - (800)521-7391

EXHIBIT A

204293

(B) "Borrower" is  
**BYRON CHISHOLM AND LISA CHISHOLM, HUSBAND AND WIFE, AS JOINT TENANTS**

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is **NEW CENTURY MORTGAGE CORPORATION**

Lender is a **CORPORATION**

organized and existing under the laws of **CALIFORNIA**

Lender's address is **18400 VON KARMAN, SUITE 1000  
 IRVINE, CA 92612**

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated **November 26, 2001**

The Note states that Borrower owes Lender **Seventy Thousand and No/100**

Dollars

(U.S. \$ **70,000.00**) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **December 1, 2031**

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- |   |   |  |
|---|---|--|
| <input checked="" type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider              | <input type="checkbox"/> Second Home Rider   |
| <input type="checkbox"/> Balloon Rider                    | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider  |
| <input type="checkbox"/> VA Rider                         | <input type="checkbox"/> Biweekly Payment Rider         | <input checked="" type="checkbox"/> Other(s) [specify]<br><b>Prepayment Rider</b><br><b>Arm Rider Addendum</b> |

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appellable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(K) "Escrow Items" means those items that are described in Section 3.

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(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

#### TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns, with power of sale, the following described property located in the COUNTY [Type of Recording Jurisdiction]

of NORMAN

[Name of Recording Jurisdiction]:

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

Parcel ID Number: 250363000

which currently has the address of

23 4TH STREET EAST . ADA  
("Property Address"):

[City], Minnesota 55510 [Zip Code]

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

\_\_\_\_\_  
BYRON CHISHOLM (Seal)  
-Borrower

\_\_\_\_\_  
LISA CHISHOLM (Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

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STATE OF MINNESOTA,

HENNEPIN

County ss:

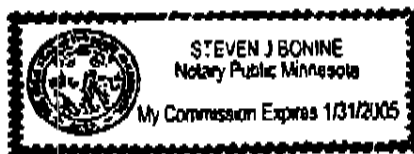
On this

26<sup>th</sup> day of NOVEMBER, 2001

, before me appeared

BYRON CHISTOLM AND LISA CHISTOLM, HUSBAND AND WIFE, AS  
JOINT TENANTS

to me personally known to be the person(s) described in and who executed the foregoing instrument and  
acknowledged that he/she/they executed the same as his/her/their free act and deed.



Notary Public

My Commission Expires: 1/31/2005

This instrument was drafted by:

New Century Mortgage  
6465 Wayzata Blvd., Ste. 990  
St. Louis Park, MN 55426

Tax statements for the real property described in this instrument should be sent to:

204293



10/17/2001 05:18PM Faxcom out 09

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SCHEDULE "A"

NORTH 1/2 OF LOT 6 AND ALL OF LOTS 7 AND 8, BLOCK 41, FIRST  
ADDITION, CITY OF ADA

NOTE: THIS PROPERTY IS ABSTRACT.

204293

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 7 CASE**

Bryon James Chisholm  
SSN XXX-XX-4850  
Lisa Marie Chisholm  
SSN XXX-XX-5605

**CASE NO. 04-60887 DDO**

Debtor.

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**MEMORANDUM IN SUPPORT OF  
MOTION FOR RELIEF FROM STAY**

**ARGUMENT**

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of September 7, 2004, Debtor is delinquent for the monthly payments as required for the months of December, 2002 through September, 2004, in the amount of \$640.32 each; accruing late charges of \$160.10 and attorneys fees and costs of \$700.00.

2. Debtor has failed to make any offer of adequate protection.

II. THE AUTOMATIC STAY SHOULD BE MODIFIED PURSUANT TO 11 U.S.C. § 362(d)(2) WHERE (1) DEBTOR DOES NOT HAVE ANY EQUITY IN THE PROPERTY, AND (2) THE PROPERTY IS NOT NECESSARY TO AN EFFECTIVE REORGANIZATION.

The first requirement under § 362(d)(2) is met where the total of all the encumbrances against the property is in excess of the value of the property. The value of the property as scheduled by Debtor is \$100,000.00 subject to Secured Creditor's mortgage in excess of \$95,767.62.

Considering selling costs of 10%, Debtor has no real equity in the property. Since this is a liquidation

case, no reorganization is being attempted.

### **CONCLUSION**

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected. Secured Creditor is also entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2) where Debtor has no equity in the property, and where the property is not necessary to an effective reorganization.

Secured Creditor respectfully requests an Order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 7th day of September, 2004.

### **WILFORD & GESKE**

By /s/ James A. Geske

James A. Geske  
Attorneys for Secured Creditor  
7650 Currell Blvd., Ste 300  
Woodbury, MN 55125  
651-209-3300  
Attorney Reg. No. 14969X

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In Re:

**CHAPTER 7 CASE****CASE NO. 04-60887 DDO**

Byron James Chisholm  
SSN XXX-XX-4850  
Lisa Marie Chisholm  
SSN XXX-XX-5605

**AFFIDAVIT OF  
JOHN TIMSON**

Debtor.

John Timson, being first duly sworn on oath, deposes and states:

1. That he is the Bankruptcy Specialist of Select Portfolio Servicing, Inc.

2. Select Portfolio Servicing, Inc. f/k/a Fairbanks Capital Corporation, is now the holder of a mortgage on real property in which the debtor has an interest. The debtor's indebtedness is evidenced by that certain mortgage deed dated November 26, 2001, executed by Byron Chisholm and Lisa Chisholm, husband and wife, as joint tenants, recorded December 7, 2001, as Document No. 204293. The property is located in Norman County, Minnesota and is legally described as follows, to-wit:

North 1/2 of Lot 6 and all of Lots 7 and 8, Block 41, First Addition, City of Ada.

3. That he has reviewed the account records relating to the Chisholm's mortgage loan, account no. 0002456101.

4. That as of August 27, 2004, the following amounts were owing on this account:

Unpaid Principal:	\$69,680.23
Interest through August 27, 2004	<del>13,335.94</del> 13,260.13 <i>ST</i>
Attorney's Fees:	700.00
Late Charges:	<del>832.52</del> 160.10
Non-Escrow Advances:	2,779.62
Other Fees:	964.02
Escrow Balance:	8,223.52

TOTAL:

~~\$96,515.87~~  
\$95,767.62

5. That the mortgage loan is delinquent for monthly mortgage payments for the months of December, 2002 through August, 2004 in the amount of \$640.32 each.

6. This affidavit is given in support of the motion of Select Portfolio Servicing, Inc. f/k/a Fairbanks Capital Corporation for relief from the automatic stay.

SELECT PORTFOLIO SERVICING, INC.

By

*John Timson*  
Its Bankruptcy Specialist

Subscribed and sworn to before me  
this 31st day of August, 2004.

*Verdine A. Freeman*  
Notary Public

Notarial Seal  
Verdine A. Freeman, Notary Public  
City Of Philadelphia, Philadelphia County  
My Commission Expires Sept. 17, 2006

Member, Pennsylvania Association Of Notaries

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 7 CASE**

Bryon James Chisholm  
SSN XXX-XX-4850  
Lisa Marie Chisholm  
SSN XXX-XX-5605

**CASE NO. 04-60887 DDO**

Debtor.

**UNSWORN DECLARATION  
FOR PROOF OF SERVICE**

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Joanna Cheyka, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Ste 300, Woodbury, Minnesota, declares that on September 7, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of John Timson, and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Bryon J. Chisholm  
Lisa M. Chisholm  
23 4<sup>th</sup> St East  
Ada, MN 56510

Tamara L. Yon  
PO Box 605  
Crookston, MN 56716

James F. Lester  
921 2<sup>nd</sup> Ave S Box 9673  
Fargo, ND 58106-9673

U.S. Trustee  
1015 U.S. Courthouse  
300 South 4<sup>th</sup> Street  
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 7th day of September, 2004.

/e/ Joanna Cheyka  
Joanna Cheyka

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 7 CASE**

Bryon James Chisholm  
SSN XXX-XX-4850  
Lisa Marie Chisholm  
SSN XXX-XX-5605

**CASE NO. 04-60887 DDO**

Debtor.

**ORDER**

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The above entitled matter came on for hearing upon motion of Select Portfolio Servicing, Inc. f/k/a Fairbanks Capital Corporation (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on September 28, 2004, at U.S. Courthouse, 118 South Mill Street, Fergus Falls, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain mortgage deed dated November 26, 2001, executed by Bryon Chisholm and Lisa Chisholm, husband and wife, as joint tenants, recorded December 7, 2001, as Document No. 204293 covering real estate located in Norman County, Minnesota, legally described as follows, to-wit:

North ½ of Lot 6 and all of Lots 7 and 8, Block 41, First Addition, City of Ada

and may pursue its remedies under state law in connection with the subject note and mortgage deed.

Notwithstanding Federal Rules of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Bankruptcy Court